IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. ~~884~~ 33

UNITED MINE WORKERS OF AMERICA, DISTRICT 12, *Petitioners*,

v.

ILLINOIS STATE BAR ASSOCIATION, an Illinois Not for Profit Corporation, CURTIS F. PRANGLEY, BERNARD H. BERTRAND, WILLIAM FECHTIG, KOREAN MOVSISIAN, HENRY W. PHILLIPS, WILLIAM C. NICOL, JOHN W. HALLOCK, WATTS C. JOHNSON and MARSHALL A. SUSLER, individually and as members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

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UNITED MINE WORKERS OF AMERICA, DISTRICT 12, *Petitioners*,

v.

ILLINOIS STATE BAR ASSOCIATION, an Illinois Not for Profit Corporation, et al.,[1]

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, United Mine Workers of America, District 12 (called "United Mine Workers")[2] pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Illinois[3] entered May 23, 1966 (A.

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[1]Appellees, other than Illinois State Bar Association, are set forth below in the text of the Petition and reference thereto is made for such other Appellees.

[2]In the trial court, initial and subsequent pleadings were by "Joseph Shannon, a member of District 12, United Mine Workers of America, an unincorporated voluntary association and labor union of workers employed in and around coal mines in the State of Illinois, and . . all the members of said association made parties hereto by representation, by Edmund Burke, their attorney . ." (R. 3, pp. 6, 8, 10, 13, 29). The Notice of Appeal was by "United Mine Workers of America, District 12, Defendants-Appellants" (R. 3, p. 32).

1a; R. 19),[4] as well as the Order of said Court entered September 21, 1966 (A. 13a; R. 22) overruling and denying Petitioners' timely Petition For Rehearing (A. 14a; R. 21) in Case No. 39,642, styled *Illinois State Bar Association, An Illinois Not For Profit Corporation, Curtis F. Prangley, Bernard H. Bertrand, William Fechtig, Korean Movsisian, Henry W. Phillips, William C. Nicol, John W. Hallock, Watts C. Johnson and Marshall A. Susler, individually and as members of the Committee on Unauthorized Practice of Law of the Illinois State Bar Association, Appellees*[5] *v. United Mine Workers of America, District* 12, *Appellants,* wherein the Supreme Court of Illinois affirmed by Opinion (A. 1a; R. 8-19) the decree of the Circuit Court of Sangamon County, Illinois, entered September 7, 1965 (R. 3, pp. 30-32), overruling and denying United Mine Workers' motion for a summary decree and granting a motion of the Bar Association for a summary judgment (R. 27-29), holding *inter alia,*[6] that United Mine Workers "are engaging, under our decisions, in the unauthorized practice of law in employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission" (A. 10a) and that its affirmance is not precluded either by Section 7 of the Labor Management Relations Act, 1947, as amended (called "Act") [29 USCA 157], the First and Fourteenth Amendments to the Constitution of the United States, or by this Court's *Brotherhood of*

[3]Sometimes herein the Supreme Court of the State of Illinois is referred to as "Illinois Supreme Court" and the Circuit Court of Sangamon County, Illinois, as "trial court."

[4]A certified appendix record in the case described in the paragraph, including Illinois Supreme Court proceedings, is furnished herewith in accordance with this Court's Rules. Pagination references following the symbol "R." are to that certified record filed in this Court's Clerk's Office. The symbol "A." refers to the Appendix to this Petition.

[5]Collectively called "Bar Association."

[6]The trial court's full injunction is related post, pp. 9-10.

Railroad Trainmen v. Virginia ex rel. Virginia State Bar, 377 U.S. 1, and *N.A.A.C.P. v. Button*, 371 U.S. 415.

OPINION BELOW

The opinion of the Illinois Supreme Court appears in Appendix A hereto (pp. 2a-13a); in the certified record (R. 9-18); and it is reported in 219 N.E. 2d 503 (Adv. Op. October 5, 1966). No opinion was rendered by the trial court.

JURISDICTION

Judgment of the Illinois Supreme Court, affirming the trial court, was entered May 23, 1966 (A. 1a). A duly filed Petition For Rehearing was denied September 21, 1966 (A. 14a). This Court's jurisdiction is invoked under 28 USC, Section 1257(3).

QUESTIONS PRESENTED

1. Does a state court decree conflict with rights guaranteed to coal miners, members of an unincorporated labor union, under the First and Fourteenth Amendments to the Constitution of the United States when it holds that such labor union engages in the unauthorized practice of law by employing a duly licensed practicing attorney on a salary basis, and paid by it from membership dues, to represent union members in the prosecution of claims before a state agency for benefits under a state workmen's compensation act where the injured members may, but are not required to, use such services?

2. Is there in this case a compelling state interest which warrants a limitation of such constitutional guarantees?

3. Does the state court decree violate the rights of such members to engage in concerted activities for the purpose of their mutual aid and protection under Section 7, Labor Management Relations Act, 1947?

4. Is there in the record any substantial evidence to sustain the restraining order and decree?

CONSTITUTIONAL AND STATUTORY PROVISIONS AND CANONS OF ETHICS INVOLVED

Pertinent constitutional provisions involved consist of the First and Fourteenth Amendments to the Constitution of the United States. In addition, Section 7, Labor Management Relations Act, 1947, as amended (29 USC, Section 157), Canons 35 and 47, Canons of Ethics of the Illinois State Bar Association and Illinois Revised Stat. (1959), Ch. 148, Sec. 138.21 are involved.[7]

STATEMENT OF THE CASE

A. PERTINENT PLEADINGS AND HOW THE FEDERAL QUESTIONS WERE RAISED.

Illinois State Bar Association, an Illinois corporation "not for profit," and certain of its members, individually and as its Committee on Unauthorized Practice of Law, complained in the Circuit Court of Sangamon County of that State that United Mine Workers of America, District 12, which cannot be licensed to practice law, has been engaged in Sangamon and other Illinois counties "in that in the course of providing services for members it has, and still does, employ an attorney on a salary basis" to represent its members "with respect to claims they may have under the" State's Workmen's Compensation Act and thereby has "offered, furnished, and rendered legal services and advice" (R. 3, p. 3). The Bar Association charges such activities to be in contravention of their rights as attorneys at law, public policy and Illinois laws, tends to "degrade the legal profession," "to bring the same into bad repute in the administration of justice," and "to mislead and defraud the public."

[7] Provisions of the foregoing constitutional amendments, federal statute and Canons 35 and 47 are set forth in Appendix B to the instant Petition (A. 20a-21a).

An answer filed by Joseph Shannon, a member of District 12, and "all the members" thereof "made parties hereto by representation" by their attorney, concedes that "as an association they are not and cannot be licensed to practice law" in Illinois, and denies "they have been for many years engaged in the practice of law," but agrees "they, severally and jointly, employ a competent attorney," a member of the Illinois State and the American Bar Associations, "on a salary basis for the sole purpose of representing them and their dependents before the Industrial Commission in cases of injury and death arising out of and in the course of their employment as coal mine employees, which they and each of them have a legal right to do" (R. 3, p. 9). Except as above stated, the answer denies "they have offered, furnished, or rendered legal services and advice" (R. 3, p. 9).[8]

A Motion for Judgment on the Pleadings having been rejected (R. 3, pp. 10, 13), in a Motion by Petitioners for re-consideration thereof (R. 3, pp. 13-14), United Mine Workers asserted that "interference by the State of Illinois, as prayed for by the Plaintiffs, with the employment by the Defendants of attorneys of their own choice to represent them and their dependents, in cases of injury and death arising out of and in the course of their employment, and under the Workmen's Compensation Act, would violate . . the rights guaranteed them by the First and Fourteenth Amendments to the Constitution of the United States." Upon the trial court's denial thereof (R. 3, p. 15), the same grounds were asserted in a Motion for Summary Decree filed by all members of District 12 "by representation . . by their attorney" (R. 3, pp. 29-30). When such Summary Judgment Motion was denied (R.

[8]A motion to strike certain allegations and for judgment on the pleadings, filed by United Mine Workers, was rejected by the trial court, as was their motion for reconsideration (R. 3, pp. 10-14).

3, p. 30-31) and the trial court issued its injunction, upon Petitioners' appeal to the Illinois Supreme Court (R. 3, pp. 32-33), the grounds were reasserted (R. 5, pp. 3-5) and Petitioners contended the injunction also violated their rights accorded by Section 7, Labor Management Relations Act, 1947 (R. 5, p. 4).

B. THE FACTS

The facts, which are not in dispute, are established by admissions in the pleadings, by Answers to Interrogatories (R. 3, pp. 15-21), and by depositions (R. 3, pp. 22-25; R. 7).

More than fifty years ago, to-wit, on February 18, 1913, delegates elected by the members in each of their local Unions to the twenty-fourth annual convention of District 12, United Mine Workers of America, an unincorporated voluntary association and labor union composed of workers employed in and around coal mines in Illinois (R. 3, p. 8), convened at Peoria in that State and avowed that establishment of a legal department had become an actual necessity and authorized and directed their District Executive Board to establish a legal department to take care of the injury cases of United Mine Workers because "the interests of the members were being juggled and even when not, they were required to pay forty or fifty per cent of the amounts recovered in damage suits, for attorney fees" (R. 3, p. 17). It was recommended at that convention that "such establishment should not mean that members be required to accept its counsel if they desired the services of others" (R. 3, p. 17).

As the Illinois Supreme Court's opinion recites (A. 2a), "For many years, the Mine Workers, a voluntary association, has employed a licensed attorney on a salary basis to represent members and their dependents in connection

with claims for personal injury and death under the Workmen's Compensation Act." On August 5, 1963, a duly convened District 12 Executive Board, pursuant to the 1913 authority and directive, employed an attorney, a member of the Illinois State Bar Association and American Bar Association, on a salary basis, plus actual transportation and hotel expenses, to handle District 12 workmen's compensation cases (R. 3, pp. 17-18, 22).[9] District 12's President, on September 26, 1963, by letter, advised the salaried attorney it would be his duty, with help of "secretaries in the Springfield and West Frankfort offices and officers of Local Unions," to see that "no member or dependent loses his rights under the Act by reason of failure to avail himself of them in time" and "to represent him before the Commission if he desires your services" but "if he is represented by other counsel you will immediately turn over his file to such counsel" (R. 24-25). The letter also made clear the attorney would "receive no further instructions or directions and have no interference from the District, nor from any officer, *and your obligations and relations will be to and with only the several persons you represent*" (R. 3, p. 25).[10] Representation of employees before the Industrial Commission is the attorney's "total scope" of employment for United Mine Workers (R. 7, p. 3). He is responsible to represent the employees "no matter how many may have claims during any particular year" and the "number of cases has nothing to do with" his salary (R. 7, p. 4); he advances no money on behalf of District 12 or the employees in connection with any hearing held (R. 7, p. 5); he is not required to do any work outside Illinois nor to do any

[9]In addition, the attorney is a State Senator in Illinois (R. 7, p. 2). His competency as an attorney is not questioned by the Bar Association or members of its Unauthorized Practice Committee.

[10]Unless otherwise indicated, all emphases herein are supplied.

type of work "other than the representation of" members injured with a claim under Illinois' Workmen's Compensation Act (R. 7, p. 5). Dues are paid by the union members (R. 3, p. 19).

The plan, as described by the current salaried attorney, operates as follows: Injured members are furnished forms by the union entitled "Report to Attorney on Accidents" which advise such injured members to fill out and send the forms to the Legal Department, District 12, United Mine Workers of America. When one of such forms is received by the legal department the salaried attorney presumes that it constitutes a request that he file with the Industrial Commission an application for adjustment of claim on behalf of the injured union member although there is no language appearing on the form which specifically requests that the salaried attorney file such claim. The Application for adjustment of claim is prepared by secretaries in the union offices and when completed is sent by the secretaries directly to the Industrial Commission. In most instances the salaried attorney has not seen or conferred with the injured member at the time the claim is filed with the commission, although it is understood by the union membership that the attorney is available for conferences on certain days at particular locations and many claimants consult with the attorney prior to the hearing (R. 7, p. 20). Between the time the claim is filed and the hearing before the commission, the salaried attorney prepares his case from his file and from examination of the application, usually without having a conference with the union member with regard to the latter's claim, although on occasions the attorney advises claimants as to the need for other medical attention (R. 7, p. 18-19). Ordinarily, the only thing an injured member receives concerning his claim is a notice to ap-

pear before the Industrial Commission, and usually this is the first time the attorney and the injured member come into contact with each other, although this does not occur as to the "major number of persons" (R. 7, p. 19).

The attorney determines what he believes the claim is worth, presents his views to the attorney for the respondent coal company during prehearing negotiation, and attempts to reach a settlement. If the coal company agrees with the Mine Workers' attorney, the latter recommends to the injured member that he accept such resolution of his claim. Final determination is made by claimants (R. 7, p. 22). If a settlement is not reached, a hearing on the merits of the claim is held before the Industrial Commission.

The full amount of the settlement or award is paid directly to the injured member. No deductions are taken therefrom, and the attorney receives no part thereof, his entire compensation being his annual salary paid by the union. Neither the District nor any officer receives any portion of the award (R. 3, p. 19).

C. THE TRIAL COURT'S INJUNCTION AGAINST PETITIONERS

Whereas the trial court rejected United Mine Workers' motion for summary decree, it sustained the Bar Association's Motion for Summary Judgment (R. 3, pp. 27-29, 30-32), finding and concluding in an Order entered September 7, 1965, "there is no genuine issue as to any material fact in this cause" and that "as a matter of law the defendants have been and are engaging in the unauthorized practice of law by retaining an attorney . . on a salary basis to represent their members with respect to claims that they may have under the provisions of the Workmen's Compensation Act of the State of Illinois" (R. 3, p. 31).

In its September 7, 1965 Order, the trial court also "permanently restrained and enjoined" the "defendants, United Mine Workers of America, District 12, its agents and employees" from (1) giving legal counsel and advice; (2) rendering legal opinions; (3) representing its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the laws and statutes of the State of Illinois; (4) employing attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois; and (5) practicing law in any form either directly or indirectly (R. 3, p. 31-32).

D. THE ILLINOIS SUPREME COURT AFFIRMED THE INJUNCTION BY FINAL JUDGMENT AND OPINION.

Upon Petitioners' appeal, the Illinois Supreme Court, by judgment entered May 23, 1966 (A. 1a) for reasons disclosed in its Opinion (A. 2a-13a), affirmed the trial court; and, as noted, it rejected Petitioners' Petition for Rehearing by Order entered September 21, 1966 (A. 13a).

Though conceding that voluntary associations, such as District 12, are not regarded as legal entities in Illinois (A. 4a), the Illinois Supreme Court avowed that "this is not to say that such voluntary, unincorporated associations may not sufficiently partake of the nature of separate entities so as to pose serious problems regarding substantial interference with the attorney-client relationship" (A. 4a-5a). Pointing to its prior holdings that "organizations, including not-for-profit organizations, which hire or retain lawyers to represent their individual members in legal matters are ordinarily engaging in the unauthorized practice of law," it recognized

its thesis therefor was that no relation of trust and confidence essential to the attorney-client relationship existed between the membership of those associations and their attorneys (A. 5a) and that " 'Legal services cannot be capitalized for the profit of laymen, corporate or otherwise' " and " 'should not be commercialized . . as if that service were a commodity which could be advertised, bought, sold and delivered' " (A. 5a).

The Illinois Supreme Court concedes "There can be no question of the hazards involved in coal mining," and that "undoubtedly the possibility exists that injured coal miners untutored in the intricacies of workmen's compensation law might accept wholly inadequate settlements" (A. 8a). Though avowing that "Benefit to the miner, in that compensation of counsel under the plan here in effect is from the union treasury rather than the injured member or his family, is not be be easily disregarded," and that it is not denied "that the organization has an active interest in securing fair treatment for its members" (A. 8a), the Illinois Supreme Court nonetheless regarded these factors as "insufficient to override the governing principles in the attorney-client relationship" (A. 9a).

It must be noted the Illinois Supreme Court regarded as "relevant" to its inquiry, the Bar Association's Canons 35 and 47 (A. 21a) which were involved in this Court's *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar* (377 U.S. 1, 6, fn. 10), which, in substance, prohibits a lay intermediary from engaging in the law practice and forbids a lawyer's permitting his services or name to be used in aid of any such unauthorized practice of law. Canon 35 provides that "A lawyer's relation to his client should be personal, and the responsibility should be direct to the client" and it permits

employment of attorneys by "an association club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested" but it excludes "legal services to the members of such an organization in respect to their individual affairs" (A. 21a).

The Illinois Supreme Court condemned the legal aid plan of United Mine Workers because "The lawyer is not paid for his services by the client; his salary is paid by the association" (A. 9a), and because (although there is no factual predicate therefor) "the interests of the employer and the client" and "the interests of the union, collectively, may extend beyond the interest of the injured member" (A. 9a). These factors, it believed, "all serve to dilute the allegiance of the lawyer to the client, weaken the integrity of their relationship, and serve the best interests of neither the public nor the parties" (A. 9a). Thus, the Illinois Supreme Court concluded that "United Mine Workers, District 12, are engaging, under our decisions, in the unauthorized practice of law in employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission" (A. 10a).

To the United Mine Workers' claim that the trial court's decree violated their right to engage in concerted activities for the purpose of their mutual aid and protection under Section 7, Labor Management Relations Act, 1947 (29 USC 157), the Illinois Supreme Court argued that if the condemned conduct is not constitutionally protected, "it cannot seriously be argued" that the statute just adverted to "restricts the State from regulating the practice of law". (A. 10a).

The Illinois Supreme Court rejected United Mine Workers' contention that the trial court's decree fell

within the proscriptions enunciated by this Court's *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1 and *N.A.A.C.P. v. Button*, 371 U.S. 415. The *Trainmen* "holding does not purport to overturn our decision precluding any financial connection between the brotherhood and the counsel selected by it to handle individual membership claims," argued that Court (A. 11a) and therefore, it declared, "we do not read *Virginia Railroad Trainmen* as constitutionally protecting . . employment on a salary basis by a labor union of counsel to represent individual members' claims before the Industrial Commission" (A. 11a). Similarly, it rejected the applicability of *Button*, and though noting that therein attorneys furnished by N.A.A.C.P. "were apparently compensated on a *per diem* basis by the organization," the Illinois court undertook distinguishment by its statement that "the litigation therein engaged was regarded as a form of consitutionally protected political expression and cannot . . be equated with the bodily injury litigation . . concerned here" (A. 11a), and by avowing that "Mine Workers may validly advise their members to seek legal advice in connection with these claims and may properly recommend particular attorneys deemed competent to handle such litigation" (A. 12a).

The Illinois Supreme Court found constitutional infringement, if any, justified by the State's interest in controlling standards of professional conduct (A. 12a). It declared, "The prohibition of payment by the organization" of the lawyer's compensation "may not be said to be direct suppression of the member's first amendment right to petition the courts"; and that there is no constitutional objection "unless it can be said that reduction in the net dollar amount remaining to him from the injury award after payment by the member of his attorney fees

is a constitutionally impermissible impairment" (A. 13a). Admitting this would be true in case of indigent claimants, the appellate court declared "the net effect upon the union members differs not at all from that upon other injured citizens" (A. 13a).

As a further justification, not warranted by the facts, the Illinois Supreme Court speculated that "substantial commercialization of the law profession may follow" if the legal aid plan were allowed and that there may be an expansion of activity to encompass "legal problems involving domestic relations, contracts, criminal law and other areas of the legal field" and that "the integrity and personal nature of the attorney-client relationship would thus be substantially impaired, a result" the Court believed "contrary to the" public interest (A. 13a).

REASONS FOR GRANTING THE WRIT

I. THE ILLINOIS SUPREME COURT'S OPINION AND JUDGMENT ARE IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION AND SECTION 7, LABOR MANAGEMENT RELATIONS ACT, 1947, AND REPRESENT AN INCORRECT INTERPRETATION OF PRIOR IMPORTANT DECISIONS OF THIS COURT.

The legal aid plan involved herein was created fifty-three years ago, as the record shows, through necessity because United Mine Workers were "required to pay forty or fifty per cent of the amounts recovered in damage suits, for attorney fees" (R. 3, p. 17). Traditionally union members have looked to their labor union for help in problems associated with working conditions. It is inconceivable that anything could be so intimately related to the aid and protection of men working in so hazardous an industry as coal mining, with so high an incidence of injuries, as wise provision in advance for competent and loyal legal assistance in the event of disabling injury or death arising out of and in the course of their employ-

ment. It was only natural that delegates elected to District 12's Convention in 1913 should have been concerned about the dissipation through attorney fees of moneys recovered for injuries arising in the course of their employment; and it was normal that it should become a compelling group interest, and not merely the personal problem of an injured miner. It was only natural, too, that miners in convention should have sought relief in their labor union by directing District 12 officers to establish a legal department. As stated by Justice Carter in his dissent in *Hildebrand v. State of California*, 225 P. 2d 508, 515 (Calif., 1950), a dissent referred to in this Court's *Trainmen* (377 U.S. 7, fn. 13), "It is nothing more than a proper joining of forces for the accomplishment of a proper legal objective of mutual protection." This accords, too, with Section 7, Labor Management Relations Act, 1947, which provides that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, *and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . .*" (A. 20a-21a). And, protection today of their legal rights at a minimum cost is as important as it was in 1913, just as injury today in their employment impairs their source of economic sustenance as it did in 1913.

United Mine Workers' annual earnings provide them with only a modest income. In 1964, United Mine Workers in District 12 numbering 14 000 of which 8.500 are working members (R. 7, p. 37), filed 416 claims for workmen's compensation, representing 4.8% of the active membership; and in the same year claims of 5.7% of the active membership or 487 claims of members were disposed of (R. 3, p. 25).

Though the Illinois Supreme Court rejected the contention that since District 12 is not a legal entity separate and apart from its members and the attorney is merely employed collectively by the members (A. 4a), nevertheless union members pay dues into their union and in a very real sense they are paying, or helping to pay, the attorney so as to have him available in litigation related to their employment if they desire the attorney's services. There is just as close an attorney-client relationship between the attorney and the claimants he represents as there is between any workmen's compensation claimant and any other attorney, the only difference being that in the one instance the attorney fees are paid by a group of individuals jointly through their union, and in the other instance the fee is paid by the individual or often by someone else. Indeed, in the instant case when a claimant desires the attorney's representation made available by himself and his fellow-miners, and the attorney assumes the responsibility, the personal relationship exists and the attorney's professional and ethical obligations attach themselves to that relationship. This is emphasized herein by the undisputed fact that, under the attorney's employment, he receives no "instructions or directions" and has "no interference from the District, nor from any officer" and the attorney's "obligations and relations will be to and with only the several persons" he represents (R. 3, p. 25). Thus, it is obvious and clear that there has not been any violation of the Canons involved herein since there is no employment of an attorney through an intermediary.

This Court, in *Trainmen's* (377 U.S. 1, 5) clear language, mandated that the First Amendment's "guarantees of free speech, petition and assembly give [in this case, United Mine Workers] the right to gather together for

the lawful purpose of helping and advising one another in asserting" statutory rights. While *Trainmen's* concern was with a federal enactment, the Court's enunciation is equally applicable to a state workmen's compensation statute designed to provide coal miners and other workmen with benefits for injuries sustained by them in exchange for common-law damages; and this is emphasized by the Court's further avowal that "statutory rights . . would be vain and futile if the workers could not talk together freely as to the best course to follow" (377 U.S. 5-6).

Nor did this Court stop with these avowals in *Trainmen.* Its continued guidelines fit precisely what United Mine Workers did in the instant case in the establishment of their legal department. "The right of members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected to give the wisest counsel" and "That is the role played by the members who carry out the legal aid program" (377 U.S. 6).

Under well-established and long-followed doctrinaire in Illinois, a voluntary unincorporated labor union has no existence apart from its members."[11] *Montgomery-Ward & Co. v. Franklin Union Local No. 4*, 323 Ill. App. 590, 56 N.E. 2d 476, 477, held "the question involved is *one of substance . . and not of procedure.*"[12] But the Illinois Supreme Court had to, and willingly did, discard that rule in order to cast District 12 into an entity distinctive

[11]Title 28, Smith-Hurd Illinois Annotated Statutes (Permanent Ed.) provides that "the common law of England so far as the same is applicable and of a general nature . . shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority."

[12]See *Schwartz v. Broadcast Music, Inc.*, DC, S.D. N.Y., 1954, 16 F.R.D. 31, holding that each individual member of an unincorporated association is a client of the association's lawyer.

from its membership, arguing "this is not to say that such voluntary, unincorporated associations may not sufficiently partake of the nature of separate entities so as to pose serious problems regarding substantial interference with the attorney-client relationship" (A. 4a-5a).

But even if District 12 be regarded as a jural entity, such characterization does not dissipate the concern the union has with the protection and welfare of its members. As representative of its members employed in the coal industry the union bargains collectively in behalf of the members as their agent as part of its program of improving their working conditions. For many years the union has been active in the enactment, improvement and enforcement of workmen's compensation statutes. The union's interest in the welfare of its members, singly and collectively, does not cease because a member has been injured. The injured member's ability to resume work upon recovery or rehabilitation, where recovery is not possible, and his welfare and that of his dependents have been of primary concern to the Union; and its long struggle "to provide security for employees and their families to enable them to meet problems arising from unemployment, illness, old age or death" through a welfare and retirement fund is reflected in the judicial history of this Court's *Lewis v. Benedict Coal Corp.*, 361 U.S. 459, 468, and other cases.[13]

Though avowing (A. 12a) "the Mine Workers may validly advise their members to seek legal advice in connection" with their compensation claims and "may properly recommend particular attorneys deemed com-

[13]See *Penello, Regional Director v. Int. Union, UMWA*, DC, D.C., 1950, 88 F. Supp. 935; *U.S. v. Int. Union, UMWA*, DC, D.C., 1950, 89 F. Supp. 187; *U.S. v. Int. Union, UMWA*, DC, D.C., 1950, 89 F. Supp. 179.

petent to handle such litigation," the Illinois Supreme Court condemned District 12's "employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission" (A. 10a), emphasizing that "The lawyer is not paid for his services by the client; his salary is paid by the association" (A. 9a), ignoring that such employment was at the direction and behest of the coal miner members and as their bargaining agent. To the United Mine Workers' contention that this Court's *Trainmen* (377 U.S. 1) and *Button* (371 U.S. 415) cases compelled a reversal of the trial court's injunctive decree, the Illinois Supreme Court's response was that *Trainmen* "does not purport to overturn our decision precluding any financial connection between the brotherhood and the counsel selected by it to handle individual membership claims"; that *Trainmen* does not constitutionally protect the "employment on a salary basis by a labor union of counsel to represent individual members' claims before the Industrial Commission" and that *Button's* "constitutionally protected political expression . . cannot . . be equated with the bodily injury litigation with which we are concerned here" (A. 11a). To reach its conclusion, the Illinois Supreme Court of necessity had to ignore and evade this Court's crucial language in *Trainmen*, indicating its imprimatur upon the very activity condemned by the Illinois Supreme Court herein, and reading (377 U.S. 7):

> "It is interesting to note that in Great Britain unions do not simply recommend lawyers to members in need of advice; *they retain counsel, paid by the union,* to represent members in personal lawsuits, *a practice similar to that which we upheld in NAACP v. Button, supra*" (371 U.S. 415).

So, too, in regard to *Button*, the Illinois Supreme Court failed to follow this Court's admonishment therein when

it said (371 U.S. 429) "a State cannot foreclose the exercise of constitutional rights by mere labels." Yet, the Illinois Supreme Court did precisely that in its quotation above, for it is not a matter of equating protected political expression "with the bodily injury litigation," as the Illinois court stated (A. 11a), but rather implementing that litigation in terms of the First Amendment's guarantees of free speech, petition and assembly under which coal miners have the right to gather together to help and advise one another in the assertion of their legal rights under the Illinois Workmen's Compensation Act and "to select a spokesman from their number who could be expected to give the wisest counsel" (377 U.S. 5-6). In *Trainmen* (377 U.S. 7), this Court said that "Laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries . . and for them to associate together to help one another to preserve and enforce rights granted them under federal laws cannot be condemned as a threat to legal ethics." The Illinois Supreme Court's condemnation of District 12's financial payment to the attorney on a salary basis could well place injured coal miners in a posture which would "bar them from resorting to the courts to vindicate their legal rights"; and , as *Trainmen* declares (377 U.S. 7), "The right to petition the courts cannot be so handicapped." Both *Trainmen and Button* make positive that a state is forbidden by the Fourteenth Amendment from infringing upon First Amendment rights.

Only recently the Virginia Supreme Court, interpreting this Court's *Trainmen* case, held that the ruling therein required a broad interpretation, saying that *Trainmen's* mandate "was issued to protect the right to conduct activities under a benevolently inspired plan con-

cerned with the prosecution of rights" under statutes "where the State had failed to show an appreciable contrary public interest." *Brotherhood of Railroad Trainmen v. Commonwealth of Virginia ex rel. Virginia State Bar*, 149 S.E. 2d 265, 271 (Va., June 13, 1966).

Thus, Petitioners submit that the trial court's injunctive decree and the Illinois Supreme Court's affirmance thereof which enjoined "defendants, United Mine Workers of America, District 12, its agents and employees" from (1) giving legal counsel and advice; (2) rendering legal opinions; (3) representing its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the laws and statutes of the State of Illinois; (4) employing attorneys on salary or retainer basis to represent its members with respect to Workmen's Compensation claims and any and all other claims which they may have under the statutes and laws of Illinois; and (5) practicing law in any form either directly or indirectly (R. 3, p. 31-32), and the latter court's opinion, not only are erroneous in holding that the conduct involved herein is violative of Canons 35 and 47, but they are in contravention of the rights guaranteed under the First and Fourteenth Amendments to the Federal Constitution and are at variance with the holdings in *Trainmen* and *Button*, as well as the rationale thereof.

If the Illinois decision is permitted to stand, laborers with injuries received in the course of and resulting from their employment, will be required, when they are both suffering physical handicap and inability to earn a livelihood, to share with a lawyer whatever compensation they may receive, inadequate though it be, as those who are knowledgeable with workmen's compensation benefit

awards are fully aware. Such a situation imposed upon coal miners and other laboring groups, coupled with the subversion of constitutional rights, accentuates the need of review of the Illinois Supreme Court's judgment and opinion herein by issuance of the writ sought herein.

II. CONTRARY TO THE ILLINOIS SUPREME COURT, THERE IS NO COMPELLING STATE INTEREST TO WARRANT A LIMITATION OF PETITIONERS' CONSTITUTIONAL RIGHTS. THE COURT'S JUDGMENT AND OPINION ARE IN CONFLICT WITH PUBLIC POLICY AS EXPRESSED BY THE LEGISLATURE IN THE WORKMEN'S COMPENSATION STATUTE.

The Illinois Supreme Court believed, and Petitioners say erroneously, that its affirmance of the trial court's decree (*ante*, pp. 9-10), is "permissible in view of the interest of the State in controlling standards of professional conduct" (A. 12a).

The Court's belief is that "substantial commercialization of the law-profession *may* follow" (A. 13a) if District 12 is permitted to employ an attorney for the purposes discussed. Yet, in view of the fact that the instant record contains no suggestion thereof in an experience of 53 years, it is obvious that the Court's statement is imaginary rather than real. Just how there could be commercialization of the legal profession under the undisputed facts herein, the Illinois court does not bother to explain. The reason for such omission is obvious from the facts which show that employee members seeking the attorney's services need not, and indeed do not, pay anything out of the awards; the attorney is forbidden to charge or receive from the individual employee any portion of the moneys received as benefits; and the Union receives no portion of the recovered amount.

United Mine Workers would be restricted in the exercise of their constitutional rights, according to the Illinois

court, because "Arguably," the union "may expand such activity to encompass legal problems involving domestic relations, contracts, criminal law and other areas of the legal field, for the union collectively is interested in the total welfare of its individual members" (A. 13a). The instant record is wholly devoid of anything to justify such speculation and conjecture. The restraints upon United Mine Workers by the injunctive decree of the trial court, sanctioned by the appellate court, are based, not upon facts, but upon a misapplied legal fiction, speculation and imagination.

The compelling state interest which the Illinois court abortively avers finds full challenge in public policy as expressed by the Illinois legislature in its workmen's compensation statute. First enacted in 1912, a principal objective thereof sought to make certain that no one takes anything out of an award except the injured person or his dependents, if he be deceased. To that end, the Illinois legislature provided in the Act's Section 21 that "No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages . . ."; and even the Illinois Public Aid Commission is not allowed to reimburse itself out of an award.

It was to help effectuate those objectives that Union members, through their convention of delegates, authorized and directed their District Executive Board to establish a legal department so as to make legal counsel available to members who desired, but who were not required to use, those services in employment injury cases.

The chief concern should not be, as the Illinois Supreme Court has appraised it, i.e., by the method the attorney

receives his pay. Indeed, since the decision herein predicates the desired personal relationship between attorney and client upon payment of an attorney fee, the legal profession is thus cast in terms of a business and reduced to such a status.

Totally at variance with the results in the instant case as achieved by two Illinois courts is the American Bar Association's Standing Committee on Professional Ethics recommendation that

> "The Canons of Professional Ethics must be adaptable to the times in which we live and our Committee's interpretations must recognize modern methods and procedures."[14]

III. THE INJUNCTIVE DECREE AFFIRMED BY THE ILLINOIS SUPREME COURT IS WITHOUT FACTUAL SUPPORT.

Not only are the reasons assigned by the Illinois Supreme Court as to the compelling state interest without basis, but, even if the Illinois courts were correct concerning the compensation work (which United Mine Workers deny.), still no word in the record sustains the full scope of the injunction directed at District 12, "its agents and employees" (*ante*, pp. 9-10), particularly with reference to the inhibitions concerning (1) giving legal counsel and advice; (2) rendering legal opinions; (3) representing themselves in any claims other than under the compensation act; (4) employing attorneys to represent them in any other kinds of claims; and (5) practicing law in any form directly or indirectly.

Where, as here, these matters are so interwoven with the federal questions presented, this Court has recognized its jurisdiction "is plain." *Enterprise Irrig. Dist. v. Farmers' Mut. Canal Co.*, 243 U.S. 157, 164.

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[14] Committee Opinion No. 295, dated August 1, 1959.

CONCLUSION

For the reasons assigned, Petitioners pray that the Petition for Writ of Certiorari should be granted and that the writ issue to review the decision and judgment of the Illinois Supreme Court, entered in Case No. 39,642 on May 23, 1966, as well as its Order entered September 21, 1966 overruling and denying Petitioners' Petition for Rehearing.

Respectfully submitted,

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Dated: December 19, 1966

APPENDIX

APPENDIX

APPENDIX A

Judgment

Filed May 23, 1966

UNITED STATES OF AMERICA

STATE OF ILLINOIS SUPREME COURT, ss.

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the ninth day of May in the year of our Lord, one thousand nine hundred and sixty-six, within and for the State of Illinois.

• • •

BE IT REMEMBERED, that, to-wit: on the 23rd day of May 1966, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

ILLINOIS STATE BAR ASSOCIATION, *Appellee*

No. 39642

vs.

UNITED MINE WORKERS OF AMERICA, DISTRICT 12, *Appellant*

Appeal from Circuit Court Sangamon County 1572-64

• • •

THEREFORE, it is considered by the Court that the decree of the Circuit Court of Sangamon County aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant costs by it in this behalf expended, to be taxed, and that it have execution therefor.

• • •

Opinion

Filed May 23, 1966

BE IT REMEMBERED, that afterwards, to-wit: on the 23rd day of May, A.D. 1966, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

Docket No. 39642—Agenda 28—March, 1966.

Illinois State Bar Association *et al.*, Appellees, v. United Mine Workers of America, District 12, Appellant.

PER CURIAM: The Illinois State Bar Association and others, individually and as members of the Committee on Unauthorized Practice of Law, filed a complaint in the circuit court of Sangamon County seeking to restrain defendant, United Mine Workers of America, District 12, from engaging in activities alleged to constitute the unauthorized practice of law. The trial court entered a summary decree granting the relief requested. From that determination the Mine Workers appeal, contending that the decree violates the first and fourteenth amendments to the United States constitution.

The facts are substantially undisputed. For many years, the Mine Workers, a voluntary association, has employed a licensed attorney on a salary basis to represent members and their dependents in connection with claims for personal injury and death under the Workmen's Compensation Act. It is understood and provided that members may employ other counsel if they so desire. Selection of the attorney was made by the Executive Board of District 12, and the terms of his employment agreed upon by the acting president and the attorney pursuant to board authorization. The letter from the former to the latter outlining the terms of employment contains the following sentence: "You will receive no further instructions or directions and have no interference

from the District, nor from any officer, and your obligations and relations will be to and with only the several persons you represent."

The plan, as described by the current salaried attorney, operates as follows: Injured members are furnished forms by the union entitled "Report to Attorney on Accidents" which advise such injured members to fill out and send the forms to the Legal Department, District 12, United Mine Workers of America. When one of such forms is received by the legal department the salaried attorney presumes that it constitutes a request that he file with the Industrial Commission an application for adjustment of claim on behalf of the injured union member although there is no language appearing on the form which specifically requests that the salaried attorney file such claim. The Application for adjustment of claim is prepared by secretaries in the union offices and when completed is sent by the secretaries directly to the Industrial Commission. In most instances the salaried attorney has not seen or conferred with the injured member at the time the claim is filed with the commission, although it is understood by the union membership that the attorney is available for conferences on certain days at particular locations. Between the time the claim is filed and the hearing before the commission, the salaried attorney prepares his case from his file and from examination of the application, usually without having a conference with the union member with regard to the latter's claim. Ordinarily, the only thing an injured member receives concerning his claim is a notice to appear before the Industrial Commission, and usually this is the first time the attorney and the injured member come into contact with each other.

The attorney determines what he believes the claim is worth, presents his views to the attorney for the respondent coal company during prehearing negotiation, and attempts to reach a settlement. If the coal company agrees with the Mine Workers' attorney, the latter recommends to the

injured member that he accept such resolution of his claim. If a settlement is not reached, a hearing on the merits of the claim is held before the Industrial Commission.

The full amount of the settlement or award is paid directly to the injured member. No deductions are taken therefrom, and the attorney receives no part thereof, his entire compensation being his annual salary paid by the union.

The question for decision is whether the above related activities amount to the unauthorized practice of law by the Mine Workers under prior determinations of this court, and, if so, whether such activity is nevertheless protected by the first and fourteenth amendments to the United States constitution.

It may be noted here that the services rendered the union members in the handling of their compensation claims were legal services and that one who performs them is engaged in the practice of law. *People ex rel. Chicago Bar Association* v. *Goodman,* 366 Ill. 346.

It is argued by the Illinois State Federation of Labor and Congress of Industrial Organizations, AFL-CIO, as *amicus curiae,* that since the United Mine Workers, District 12, is a voluntary, unincorporated association and not a legal entity separate and apart from its constituency, there is no problem concerning the existence of a lay intermediary between the individual member and the attorney. Under this view, the attorney is merely employed collectively by the members of the association to present claims before the Industrial Commission. While it is correct that it has been held that a voluntary association such as the Mine Workers is not a legal entity amenable to process and suit at law (*Cahill* v. *Plumbers, Gas and Steam Fitters' and Helpers' Local* 93, 238 Ill. App. 123, 127; *Chicago Grain Trimmers Association* v. *Murphy,* 389 Ill. 102, 109; 4 Am. Jur., Associations & Clubs, par. 41), this is not to say that such voluntary, unincorporated associations may not sufficiently

partake of the nature of separate entities so as to pose serious problems regarding substantial interference with the attorney-client relationship. (As to whether unincorporated labor unions should be treated as "entities," see The Legal Status and Suability of Labor Organizations, 28 Temple Law Quarterly I.) In any event we are concerned here not with legal forms, but activities of the association. It is the latter which must determine whether the association is engaging in the unauthorized practice of law. See *Rhode Island Bar Association* v. *Automobile Service Association,* 55 R. I. 122, 179 Atl. 139.

It is clear that under the prior decisions of this court, organizations, including not-for-profit organizations, which hire or retain lawyers to represent their individual members in legal matters are ordinarily engaging in the unauthorized practice of law. (*People ex rel. Courtney* v. *Association of Real Estate Tax-payers of Illinois,* 354 Ill. 102; *People ex rel. Chicago Bar Association* v. *The Motorists Association of Illinois,* 354 Ill. 595; *People ex rel. Chicago Bar Association* v. *Chicago Motor Club,* 362 Ill. 50.) The underlying reasons for such conclusion are that the "relation of trust and confidence essential to the relation of attorney and client did not exist between the members of the respondent association and its attorneys, and whatever relation of trust and confidence existed was between the membership and the association." (*People ex rel. Courtney* v. *Association of Real Estate Tax-payers,* p. 109.) And, as was said in *Chicago Motor Club, p.* 57: "Legal services cannot be capitalized for the profit of laymen, corporate or otherwise, directly or indirectly, in this State. In practically every jurisdiction where the issue has been raised it has been held that the public welfare demands that legal services should not be commercialized, and that no corporation, association or partnership of laymen can contract with its members to supply them with legal services, as if that service were a commodity which could be advertised, bought, sold and delivered."

See, also, *People ex rel. Chicago Bar Association* v. *Goodman,* 366 Ill. 346, a case involving a lay respondent's employment of lawyers to represent injured persons whose workmen's compensation claims respondent was attempting to settle, where the court said at page 356: "The faithful observance of the fiduciary and confidential relationship between attorney and client is one of the greatest traditions of the legal profession. In Goodman's business that relationship is absent as to the litigant whom the attorney employed by Goodman purportedly represents. The respondent is the attorney's real client and paymaster, and the one to whom the attorney owes allegiance."

Thought to be of paramount importance to the public is the preservation of the integrity of the lawyer-client relationship involving the highest degree of trust and confidence, and an unswerving dedication of the lawyer's abilities to the interests of his client. Intervention in this relationship of third-party organizations by whom lawyers are directly employed and compensated to handle personal claims of organization members has generally been prohibited. See cases in 7 Am. Jur. 2d, p. 100; 157 A.L.R. 292.

In *In Re Brotherhood of Railroad Trainmen,* 13 Ill. 2d 391, this court applied the foregoing considerations to an organization similar in structure to the United Mine Workers association. There, the brotherhood, through its Legal Aid Department, had established a nationwide scheme whereby "regional counsel" were selected by the Brotherhood. These attorneys paid the departmental operating costs and were, in turn, recommended to individual brotherhood members as competent to represent them on personal injury and death claims. In that case this court held impermissible any "financial connection of any kind between the Brotherhood and any lawyer" in connection with personal injury claims of brotherhood members. However, the court specifically set forth an alternate plan which would be permissible. Reference thereto is appropriate here. It was there

stated: "The Brotherhood has a legitimate interest in investigating the circumstances under which one of its members has been injured. That interest antedates the occurrence of any particular injury. We are of the opinion that the Brotherhood may properly maintain a staff to investigate injuries to its members. It may so conduct those investigations that their results are of maximum value to its members in prosecuting their individual claims, and it may make the reports of those investigations available to the injured man or his survivors. Such investigations can be financed directly and without undue burden by the 218,000 members of the Brotherhood. The Brotherhood may also make known to its members generally, and to injured members and their survivors in particular, first, the advisability of obtaining legal advice before making a settlement and second, the names of attorneys who, in its opinion, have the capacity to handle such claims successfully." (13 Ill. 2d at pages 397-98). We also specifically refuted the argument, presented again here, that the collective interest of the members of the union in recovering adequate compensation for bodily injury and death is largely synonymous with the individual members' interests concerning their particular claims, holding that, "While these considerations have weight, they are insufficient in our opinion to override the principles that must govern the members of the legal profession in their relations with clients."

Also relevant to our inquiry here are the Canons of Ethics of the Illinois State Bar Association and the Chicago Bar Association. While such canons do not have the force and effect of judicial decision or statutory law, they nevertheless are of interest to this court, provide guidelines to members of the profession and are helpful in reaching determinations in particular cases. Canons 35 and 47 provide:

> "(35) Intermediaries. The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and

qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

"A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs. * * *

"(47) Aiding the Unauthorized Practice of Law. No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate."

These canons are similar to those of the American Bar Association which have been interpreted by that group as precluding the employment arrangement now before us. (Informative Opinion A of 1950 of the American Bar Association Standing Committee on Unauthorized Practice of Law.)

In our consideration of this case, the policy arguments of the Mine Workers and *amici* are impressive. There can be no question of the hazards involved in coal mining, and undoubtedly the possibility exists that injured coal miners untutored in the intricacies of workmen's compensation law might accept wholly inadequate settlements. Benefit to the miner, in that compensation of counsel under the plan here in effect is from the union treasury rather than the injured member or his family, is not to be easily disregarded, nor is it to be denied that the organization has an active interest in securing fair treatment for its members. Arrangements whereby common interest groups provide legal services for their membership have respected advocates and are recognized as proper in varying forms by some States. (See

Markus, Group Representation by Attorneys as Misconduct, 14 Cleveland-Marshall Law Review, 1, (1965).) But, persuasive as these and other considerations are, we believe as in *In Re Brotherhood of Railroad Trainmen* that they are insufficient to override the governing principles in the attorney-client relationship.

That relationship is pre-eminently personal in nature and the fundamental duty of an attorney involves undiluted loyalty to the client whom he serves and whose interests he protects, considerations we believe largely absent where the attorney has been selected and hired on a salary basis by a lay intermediary to represent individual clients. It is basically a master-servant relationship, but as the New York Court of Appeals has put it (*In Re Cooperative Law Co.* 198 N.Y. 479, 483-4, 92 N.E. 15-16), it is such "in a limited and dignified sense, and it involves the highest trust and confidence." In the case before us, the lawyer is not directly employed by the miner for whose peculiarly personal and individual injury he seeks compensation; he is chosen and employed by the officers of the union. The lawyer is not paid for his services by the client; his salary is paid by the association. Even though the terms of the letter of employment indicate no organizational direction will be given, the interests of the employer and the client in a given case may or may not be identical, since as the AFL-CIO *amicus* brief indicates, the interests of the union, collectively, may extend beyond the interest of the injured member. Conceivably, the interest of the former might be best served by utilizing a particular case as a testing vehicle for appellate review of untried legal theories in the hope of securing a determination beneficial to union members collectively in future litigation, whereas the injured member may prefer a proffered settlement deemed wholly adequate by him. It is manifest, we believe, that these factors all serve to dilute the allegiance of the lawyer to the client, weaken the integrity of their relationship, and serve the best interests of neither the public nor the parties. We, of course, do not deal here with the

totally different case of a salaried lawyer for indigent clients.

We therefore conclude that the United Mine Workers, District 12, are engaging, under our decisions, in the unauthorized practice of law in employing an attorney on a salary basis to represent individual members' claims before the Industrial Commission. However, our inquiry does not terminate here, for it is argued that Federal statutory law and decisions of the United States Supreme Court preclude restraining the conduct engaged in by the union.

It is maintained by the Mine Workers that the circuit court decree violates their right to engage in concerted activities for the purpose of their mutual aid and protection under section 157 of the Labor Management Act. (29 U.S.C.A. 157.) However, if the conduct attacked was properly determined to constitute the unauthorized practice of law and is not protected from proscription by constitutional mandate, it cannot seriously be argued that general statutory language granting the right to union members "to engage in * * * concerted activities for the purpose of collective bargaining or other mutual aid or protection" restricts the State from regulating the practice of law. (*In Re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391, 395.) Accordingly, the ultimate inquiry herein is whether the decree of the circuit court violates the guarantees of the first and fourteenth amendments to the United States constitution as interpreted by the United States Supreme Court in the cases of *Brotherhood of Railroad Trainmen* v. *Virginia ex rel. Virginia State Bar*, 377 U.S. 1,12 L.Ed. 2d 89, and *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 9 L. Ed. 2d 405.

In *Virginia Railroad Trainmen* the court held that "the First and Fourteenth Amendments protect the right of the members through their Brotherhood to maintain and carry out their plan for advising workers who are injured to obtain legal advice and for recommending specific

lawyers. Since the part of the decree to which the Brotherhood objects infringes those rights, it cannot stand; and to the extent any other part of the decree forbids these activities it too must fall." 377 U.S. at p. 8.

The court there (377 U.S. 5, n.9) specifically pointed out that the railroad trainmen were objecting to only those portions of the decree encompassed by the language of the holding, as the brotherhood had denied that it was engaging in practices forbidden by our decree in *In Re Brotherhood of Railroad Trainmen*, 13 Ill. 2d 391. Accordingly, that holding does not purport to overturn our decision precluding any financial connection between the brotherhood and the counsel selected by it to handle individual membership claims. As a consequence, we do not read *Virginia Railroad Trainmen* as constitutionally protecting the conduct we are concerned with here, *i.e.* employment on a salary basis by a labor union of counsel to represent individual members' claims before the Industrial Commission. The circuit court decree in question here does not attempt to restrain the union from advising its members to seek legal advice or from recommending particular attorneys thought competent to handle workmen's compensation claims. As related earlier, our decision in *In Re Brotherhood of Railroad Trainmen* specifically allows such conduct.

In *N.A.A.C.P.* v. *Button*, the Supreme Court of the United States held that a system devised by the N.A.A.C.P. to furnish and recommend attorneys (who were apparently compensated on a *per diem* basis by the organization in connection with each case handled) to member litigants for the prosecution of civil rights cases was constitutionally protected by the first and fourteenth amendments. However, the litigation therein engaged was regarded as a form of constitutionally protected political expression and cannot as such be equated with the bodily injury litigation with which we are concerned here. Also, it is to be noted that an apparent dearth of Virginia lawyers willing to handle civil

rights litigation was deemed of some importance by the Supreme Court, and at least Mr. Justice Douglas was influenced by his conclusion that the State's attempt to characterize the N.A.A.C.P.'s activities as "solicitation" indicated a legislative purpose to penalize that group because of desegregation activities. Further, the majority opinion there read the decree of the Virginia Supreme Court of Appeals "as proscribing any arrangement by which prospective litigants are advised to seek the assistance of particular attorneys." (371 U.S. at page 433.) Under such construction, the decree was deemed violative of the first and fourteenth amendment freedoms of speech and expression.

Such is not the case here, as indicated earlier. We held in the *Illinois Brotherhood* case, and the bar associations now concede, that the Mine Workers may validly advise their members to seek legal advice in connection with these claims and may properly recommend particular attorneys deemed competent to handle such litigation.

Each of the opinions in these cases (*Virginia Railroad Trainmen* and *Button*) recognizes the right of individual States to regulate the practice of law and those who practice it insofar as such regulations do not infringe upon first amendment guarantees relating to freedom of association and expression. If infringement results, it is sustainable upon a showing of a compelling State interest. It seems to us that the compelling quality of the State interest, sufficient to justify State regulation here, may well be something less than the quality required to restrict constitutional litigation of the magnitude embraced in *Button*. We seriously doubt that proscription of this salary arrangement constitutes infringement of constitutionally protected rights of the union members. If it be thought to do so, however, we believe it permissible in view of the interest of the State in controlling standards of professional conduct. The prohibition of payment by the organization of the compensation of the lawyer who represents the individual union member seeking redress

for his injuries certainly may not be said to be direct suppression of the member's first amendment right to petition the courts. Nor do we think that his right so to do is impaired in a constitutionally objectionable sense unless it can be said that reduction in the net dollar amount remaining to him from the injury award after payment by the member of his attorney fees is a constitutionally impermissible impairment. Such it might be were we dealing with indigent claimants, but we are not, and the net effect upon the union member differs not at all from that upon other injured citizens.

Should the conduct manifested here be allowed, substantial commercialization of the law profession may follow. Arguably, if a labor union may hire salaried attorneys to represent its individual constituents in occupationally-caused injury litigation, it may expand such activity to encompass legal problems involving domestic relations, contracts, criminal law and other areas of the legal field, for the union collectively is interested in the total welfare of its individual members. It would seem possible, and even likely, that any group of individuals with a similarity of interests would be allowed to associate for the purpose of hiring salaried attorneys to represent its individual members, and that the integrity and personal nature of the attorney-client relationship would thus be substantially impaired, a result we believe contrary to the interest of the public.

The decree of the circuit court of Sangamon County is affirmed.

Decree affirmed.

Rehearing Denied

September 21, 1966

BE IT REMEMBERED, that, to-wit: on the 21st day of September, A.D. 1966, the same being one of the days of the

Term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

ILLINOIS STATE BAR ASSOCIATION, *Appellee*

No. 39642

vs.

UNITED MINE WORKERS OF AMERICA, DISTRICT 12, *Appellant*

Appeal from Circuit Court Sangamon County

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

Filed June 6, 1966

No. 39,642.

PETITION FOR REHEARING.

Now come District 12, United Mine Workers of America, by Edmund Burke, their attorney, and present herewith their petition for re-hearing of the above entitled cause and respectfully pray that a rehearing be granted in said cause upon the grounds and for the reasons hereinafter set forth in their petition herewith presented.

* * *

MAY IT PLEASE THE COURT:

The Court has overlooked the fact that the sole purpose of the establishment, in 1913, by the members, at their convention, of a legal department to take care of their compensation cases, was to effectuate the expressed intent of the Act which provides in Section 21 that

> "No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be liable in any way for any lien, debt, penalty or damages."

and to curb the activities of avaricious lawyers and ambulance chasers (Abstract, p. 17, Appellants' Brief, p. 11).

The Court has overlooked, also, what happened to Elery Morse, an elderly man who sustained a permanent partial disability, and who, acting upon bad advice, failed to avail himself of the services of his own compensation department, and fell among Philistines (Abstract p. 26, Brief p. 9).

The Court quotes from the Chicago Motor Club case that the public interest demands that no corporation, or association of laymen contract with it members for legal services as if such service was a commodity, to be advertised, bought and sold. Just how that observation can be applied to the case here at bar is not apparent. The Court has overlooked the fact, that in the record in this case there is not even a suggestion that any legal service was advertised, bought or sold by or to anyone.

The Court stresses at great length the necessity to the attorney-client relation of a personal trust and confidence which, it is intimated, may depend upon who pays the attorney's fee. A lawyer may accept or reject an employment for financial, or any other reasons. But having accepted employment by a client, and assumed the responsibility of representing him, a lawyer whose loyalty to his client would be affected by consideration of who paid his fee, or whether it was paid at all, would be unfit in character, ethics and morals to be a member of the bar at all. The practice of law is a profession, and that is one of the differences between a profession and a business.

After reciting, in the first five paragraphs of its opinion, a summary of the facts in the record, the Court says: "The question for decision is whether the above related

activities amount to unauthorized practice of law". Later, in stating its reasons for answering the question in the affirmative, it assumes facts and reaches conclusions wholly unsupported by the record.

The true facts with reference to the activities of the United Mine Workers of America during the more than fifty years that it has paid many respected members of the legal profession affiliated with the local, state, and American bar associations to represent its members and their dependents desiring legal services solely with reference to injuries and deaths occurring in their employment, are contrary to the assumptions and conclusions indulged.

In Paragraph 16 of its opinion, after pointing out that in this case, even though the terms of the letter of employment of the current attorney indicate no organizational direction will be given, it is *assumed* that a situation may exist where the interest of District 12 and that of the injured member may not be identical, and then the following imaginary situation is presented which the Court suggests might be conceivable, disregarding the fact that there is no evidence indicating that such a situation has ever arisen after fifty years' experience:

> "Conceivably, the interest of the former might be best served by utilizing a particular case as a testing vehicle for appellate review of untried legal theories in the hope of securing a determination beneficial to union members collectively in future litigation, whereas the injured member may prefer a proffered settlement deemed wholly adequate by him. It is manifest, we believe, that these factors all serve to dilute the allegiance of the lawyer to the client, weaken the integrity of their relationship, and serve the best interests of neither the public nor the parties. We, of course, do not deal here with the totally different case of a salaried lawyer for indigent clients."

If the source of the attorney's fee, or salary, and the imaginary division of professional loyalty, contributed,

in any way, to the Court's conclusion in the case it is wholly without support of any fact in the record. The defendants had no reason to believe it would turn out to be a matter of consideration in the case and no opportunity to offer proof by outstanding attorneys throughout the State showing the undivided loyalty of the miners' attorneys to their clients. This Court should, at least, remand the case to the Circuit Court with instructions to hear evidence upon the question if it considers it of any importance.

The undisputed facts in the record are that the total scope of the attorney's employment is representation of injured and deceased members of the organization and their dependents in matters arising under the Workmen's Compensation Act, and the United Mine Workers of America does not require them to do any other kind of work (Abs. p. 22). No member of the organization is contacted for the purpose of having the attorney represent him (Abs. p. 23). The attorney does not receive instructions or directions or interference from the organization or any of its officers and his obligations and relations are to and with his client only (Abs. p. 25). Injured members are also advised that they may employ other counsel if they desire to do so.

The citation of cases previously decided by this Court involving the unauthorized practice of law by other groups are not persuasive with reference to the situation here presented, because there is no other group in which the relationship between the attorney and his clients are similar to that involved in this case.

The present arrangement made by the United Mine Workers of America was originally inaugurated at its annual convention on February 18, 1913 (Abs. p. 17).

The first Workmen's Compensation Act in the State of Illinois became effective May 1, 1912. The original Act

made it elective as to enterprises and businesses which might be subject to its provisions. However, effective July 1, 1917, it was amended so as to make it applicable to all employers and employees engaged in enterprises and businesses that were declared to be extra-hazardous. The arrangement which is now being charged as involving the illegal practice of law was adopted and suggested by the enactment of the Workmen's Compensation Act, which involves only the relationship between the employer and employee.

There is no basis in the record, or fact revealed by past experience, which would justify the conclusions indulged in the last paragraph of the opinion. In that paragraph it is argued that the conduct here manifested, if allowed, would result in substantial commercialization of the law profession. It is suggested that it may expand to encompass legal problems involving domestic relations, contract, criminal law, and other areas of the legal field, and that it would seem likely that any group of individuals with a similarity of interests would be allowed to associate for the purpose of hiring salaried attorneys to represent its individual members, and that the integrity of the personal nature of the attorney-client relationship would thus be substantially impaired.

The Court has overlooked the fact that there is not one particle of evidence that any of the dire things anticipated and predicted if allowed to continue, have occurred during the fifty years that this conduct has been permitted to continue without interruption and with the approval and commendation of every attorney familiar with the present arrangement.

It is understandable that affluent persons, like the Plaintiffs, who can be proud of their lucrative law practices (Abs. p. 2), and others in like affluent circumstances, would find it difficult to understand that the $1,795.00 taken out of the award of Elery Morse (Abs. p. 26), which

even the Public Aid Commission is not permitted to do, might sometime be the difference to him between a frugal but decent living and the indigence referred to by the Court in the closing paragraphs of its opinion.

The Court overlooked other matters which it judicially knows because they are not only matters of current information and common public knowledge, but official statistics provided by law in the reports of the Department of Mines and Minerals of the State of Illinois, that in 1964 there were nine fatal mine accidents and four hundred thirty-five non-fatal accidents involving more than seven days loss of work, and that, not long ago, there were fatal accidents leaving eleven widows and twenty-one orphans; and, that not long before that, there were, after one Illinois mine disaster, one hundred nine widows and one hundred ninety-five orphans, all of whom were kept out of the clutches of the ambulance chasers and wolves by the United Mine Workers and their attorneys.

Yet, the Court says near the end of its opinion, in an attempt to distinguish the Button case, that

> "However, the litigation therein engaged was regarded as a form of constitutionally protected political expression and cannot as such be equated with the *bodily injury* litigation with which we are concerned here."

The right of the coal miners in Illinois to concerted action to protect themselves and their families from the ravages of death and disability in their work means more than mere "bodily injury litigation" which might mean a bruised thumb or a sprained ankle.

It is hoped by many good lawyers, more interested in the public image of the courts and the bar than in collection of fees from disabled miners and their widows and orphans, that by re-hearing or otherwise, that unfortunate and ill-considered expression may not be allowed to become a part of the permanent record of the Court.

In view of the fact that the Court has overlooked the matters hereinabove pointed out, we urge a re-hearing should be granted and that on such re-hearing the decree of the Circuit Court should be reversed.

* * *

APPENDIX B

Constitution of the United States

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

Labor Management Relations Act, 1947:

Section 7 (29 USC 157) *Right of employees as to organization, collective bargaining, etc.*

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and

to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a) (3) of this title.

Canons of Ethics of the Illinois State Bar Association

"(35) Intermediaries. The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigent are not deemed such intermediaries.

"A lawyer may accept employment from any organization, such as an association, club or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs. * * *

"(47) Aiding the Unauthorized Practice of Law. No lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate."